

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

ESTES EXPRESS LINES
3901 West Broad Street
Richmond, Virginia 23230

Plaintiff

v.

NEW CASTLE TRUCK REPAIR AND
MANUFACTURING, INC.
1009 River Road
New Castle, Delaware 19720

Defendant

CIVIL ACTION

NO. _____

COMPLAINT

Parties

1. Plaintiff Estes Express Lines ("Estes") is a motor carrier engaged in the performance of interstate carriage for hire by authority of the U.S. Surface Transportation Board pursuant to 49 U.S.C. § 13501.

2. Estes is a Virginia corporation with its principal place of business located at 3901 West Broad Street, Richmond, Virginia 23230.

3. Defendant New Castle Truck Repair and Manufacturing, Inc. ("New Castle") is, upon information and belief, a Delaware corporation with its place of business located at 1009 River Road, New Castle, Delaware 19720.

Jurisdiction

4. Jurisdiction in this matter is based upon 28 U.S.C. § 1337(a) as a cause of action arising under the Interstate Commerce Act, 49 U.S.C. §§ 10101, *et seq.*

5. The subject matter of this action stems from freight charges assessed pursuant to applicable agreements, tariffs, and rates governing the carriage of freight by motor carrier.

6. Venue lies in this judicial district by virtue of 28 U.S.C. § 1391(a) in that the defendant's principal place of business is in this judicial district.

7. The subject matter of this action stems from freight charges assessed pursuant to applicable agreements, tariffs and rates governing the common carriage of freight by motor carrier.

Cause of Action

8. Estes entered into an agreement with New Castle pursuant to which New Castle agreed to pay Estes for the interstate transport of freight by motor carrier.

9. Pursuant to the agreement between the parties, Estes served as a motor carrier transporting freight in interstate commerce on behalf of New Castle.

10. Estes presented New Castle with certified freight bills for each movement, and demanded payment of freight charges in accordance with the rates and terms agreed to by the parties. These rates include a "discount" for prompt payment that is removed if payment is not received in a timely manner. A true and correct copy of the list of freight charges with the discount is appended hereto as Exhibit "A" and incorporated herein by reference.

11. With the discount removed, the amount of freight charges due and owing to Estes from New Castle pursuant to governing tariffs presently totals \$26,463.60, plus accrued interest and costs.

12. Pursuant to the terms of the applicable tariff and agreements between the parties, Estes is contractually entitled to recover fees and costs presently in the amount of \$7,939.08 incurred as a result of having to file and pursue its claim in litigation before this Court.

13. Despite demand by Estes for payment, New Castle has refused to make payment of said freight bills.

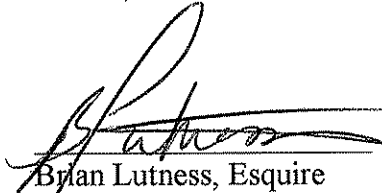
WHEREFORE, Estes Express Lines demands the following relief under its Complaint:

- a. A judgment against defendant New Castle Truck Repair and Manufacturing, Inc. in the total amount of \$34,402.68 pursuant to the applicable tariffs and agreements;
- b. Recovery of its costs, plus interest; and
- c. Any and all other relief to which it is entitled.

Respectfully submitted,

SILVERMAN, McDONALD & FRIEDMAN

By:



Brian Lutness, Esquire

DE Bar ID: 3572

1010 North Bancroft Parkway,

Suite 22

Wilmington, DE 19805

Telephone: 302-888-2900

Fax: 302-888-2923

E-mail: brian@silverman-mcdonald.psemail.com

OF COUNSEL:

Kenneth J. Grunfeld, Esquire

Chad D. Mountain, Esquire

JANSSEN & KEENAN P.C.

One Commerce Square

2005 Market Street, Suite 2050

Philadelphia, PA 19103

215-665-8888 phone

215-665-8887 fax

E-mail: kgrunfeld@janssenkeenan.com

E-mail: cmountain@janssenkeenan.com

Attorneys for Plaintiff

Estes Express Lines

Dated: September 14, 2005